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June 10, 2008

**Federal Election Commission
General Counsel's Office
999 E Street, NW
Washington, DC 20463**

RE: MUR 6016

Dear Mr. Jordan:

We are in receipt of a complaint filed with the Federal Election Commission, MUR 6016, alleging an isolated violation of 11 CFR 110.11(c)(3)(ii).¹ This response is submitted on behalf of Ose for Congress and Vona Copp, in her capacity as Treasurer of Ose for Congress.

This complaint was filed by Mr. Ose's opponent during the course of a bitterly contested primary election, which was held on June 3, 2008. Mr. Ose was not victorious in that election and his campaign activities have ceased. Ose for Congress and Ms. Copp respectfully request that the Commission decline to take action on the complaint.

The complaint alleges that a single television advertisement failed to comply with 11 CFR 110.11(c)(3)(ii) because the advertisement did not include "a clearly identifiable photographic or similar image" of Mr. Ose. 11 CFR 110.11(c)(3) sets forth specific disclaimer requirements for radio and television communications authorized by candidates. Subsection (ii) states:

A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

(A) Through an unobscured, full screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height.

¹ The constitutionality of 11 CFR 110.11 is in question in light of *ACLU v. Heller* (9th cir., 2004) 378 F.3d 979.

**FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL**

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The complaint asserts that an advertisement *only* complies with 11 CFR 110.11(c)(3)(ii)(B) if the photographic image is at least 80% of the vertical screen height. This is an inconsistent interpretation of the Commission's overall regulatory scheme, and of this specific regulation in particular. In each of the Commission's regulations setting forth specific disclaimer requirements, it is clear from the wording that the Commission is providing *safe harbor* suggestions, but that their suggestions are not the only way a committee can comply with the broader disclaimer requirements. Some examples are set forth as follows:

- The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in twelve (12)-point type size satisfies the size requirement of this paragraph when it is used for signs, posters, flyers, newspapers, magazines, or other printed material that measure no more than twenty-four (24) inches by thirty-six (36) inches. (11 CFR 110.11(c)(2)(i))
- The disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. A disclaimer satisfies the color contrast requirement of this paragraph if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication. (11 CFR 110.11(c)(2)(iii))
- The following are examples of acceptable statements that satisfy the spoken statement requirements...with respect to a radio, television, or other broadcast, cable, or satellite communication, but they are not the only allowable statements... (11 CFR 110.11(c)(3)(iv))

Regulation 11 CFR 110.11(c)(3)(ii)(B) states that "a photographic or similar image of the candidate *shall* be considered clearly identified if it is at least eighty (80) percent of the vertical screen height" (*emphasis added*). The regulation does not state that a photographic image that is less than 80% fails to satisfy the "clearly identified" requirement. As stated, the 80% guideline is a safe harbor, not the only method for compliance with the regulation.

The advertisement fully complied with all disclaimer requirements. At the end of the advertisement appears the written disclaimer "Paid for by Doug Ose for Congress," in white all-capital letters, over a gray background. The disclaimer appears in excess of four seconds, and constitutes 7% of the vertical height of the screen. The spoken disclaimer, "I am Doug Ose, and I approved this ad," plays at the end of the ad in Doug Ose's voice, accompanied by a photograph of Doug Ose, at the bottom of the screen next to the written disclaimer.

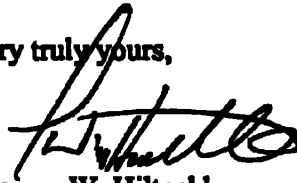
Looking at the specific photographic image in question, there is no doubt that the image is of Mr. Ose. As the complainant points out, numerous public communications were disseminated to the electorate during the course of the campaign. The voters should have been very familiar with the image of Mr. Ose, and could not have mistaken the photographic image at the end of the advertisement in question for any individual other than Mr. Ose, especially in light of the fact that all other disclaimer requirements were unquestionably satisfied. The public was not misled.

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We urge that no action be taken against Ose for Congress or Ms. Copp in connection with MUR 6016. The election is over, and Mr. Ose will not be appearing on the general election ballot in November.

Enclosed please find the completed Statement of Designation of Counsel. If you have questions or require additional information, please direct your inquiries to me.

Very truly yours,



Thomas W. Hiltachk

TWH:ANT:sd

Enclosure

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FEDERAL ELECTION COMMISSION
898 E Street, NW
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL
Please use one form for each Respondent/Client
FAX (202) 219-3923

MUR# 6016

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The above-named individual and/or firm is hereby designated as my
counsel and is authorized to receive any notifications and other communications
from the Commission and to act on my behalf before the Commission.

6/11/08
Date

Tom J. Lopp
Respondent/Client Signature

Treasurer
Title

RESPONDENT/CLIENT Vona Copp, Treasurer, Ose for Congress
(Please Print)

MAILING ADDRESS: 9321 Silverband Lane, Elk Grove, CA 95624

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Information is being sought as part of an investigation being conducted by the Federal Election
Commission and the confidentiality provisions of 2 U.S.C. § 437g(m)(1)(A) apply. This section
prohibits making public any investigation conducted by the Federal Election Commission without
the express written consent of the person under investigation.

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